



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
STEVE GAW
BRYAN FORBIS
ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. PRENGER
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

October 8, 2003

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: Proposed Amendments to Rules 4 CSR 240-3.165, 4 CSR 240-3.245,
4 CSR 240-3.335, 4 CSR 240-3.435, 4 CSR 240-3.540, and 4 CSR 240-3.640,
Submission Requirements for Public Service Commission Annual Reports.
No. AX-2004-0160

Dear Mr. Roberts:

Executive Order 03-15, Section 2, requires, among other things, that state agencies determine whether a proposed rule or rules affect small businesses. If the Public Service Commission determines that its proposed rule or rules affect small businesses by causing a direct and significant economic burden, it must then prepare a small business impact statement for submission to the Secretary of State.

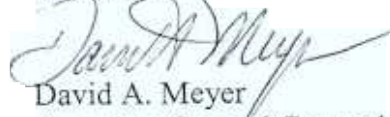
In consultation with the staff of the Public Service Commission, I have undertaken an analysis of whether the proposed rule modifications updating the Commission's annual report submission regulations affect small businesses. I have determined that the proposed rule modifications do not affect small businesses in a direct and significant manner, nor do they directly relate to the formation, operation or expansion of a small business.

The rule modifications listed above are designed to address, in a uniform fashion, changes to the Public Service Commission's annual report submissions for electric, gas, sewer, steam heating, telecommunications, and water utilities, respectively. The modifications update the Commission's rules to standardize terminology, take into account electronic filing options, clarify submission extension options, incorporate existing statutory penalty provisions, and clarify confidential treatment arrangements. As a matter of practice, the Commission has already

accepted and treated submissions in the manner outlined in the proposed modifications. None of these modifications will have any direct and significant economic burden upon small businesses. Therefore, preparation of a small business impact statement is not required in this matter.

Please let me know if you have any questions based upon the foregoing.

Sincerely,

A handwritten signature in cursive script, appearing to read "David A. Meyer", is written over a light blue rectangular background.

David A. Meyer
Associate General Counsel

(573) 751-8706

(573) 751-9285 (Fax)



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4 CSR 240-3.335, 4 CSR 240-3.435, 4 CSR 240-3.540, and 4 CSR 240-3.640,
Submission Requirements for Public Service Commission Annual Reports.
No. AX-2004-0160

Dear Mr. Roberts:

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rule or regulation in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving a real property owner of all economically beneficial use of that real property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. The Court also held that when state regulations compel a property owner to suffer a permanent physical invasion of his/her property, such an invasion is compensable.

The proposed modifications are designed to address, in a uniform fashion, changes to the Public Service Commission's Annual Report submissions for electric, gas, sewer, steam heating, telecommunications, and water utilities, respectively.

The proposed rule does not implicate the takings clause of the U.S. Constitution, because these rule modifications do not involve the taking of real property.

Please let me know if you have any questions on this issue.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David A. Meyer". The signature is fluid and cursive, with the first name "David" being more prominent.

David A. Meyer
Associate General Counsel
(573) 751-8706
(573) 751-9285 (Fax)

MEMORANDUM

Dale Hardy Roberts, Secretary

DATE: November 6, 2003

Authorization to File Proposed Rulemaking with the Office of Secretary of State

CASE NO: AX-2004-0160

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Rulemakings with the Office of Secretary of State, to wit:

4 CSR 240-3.165 Annual Report Submission Requirements for Electric Utilities

4 CSR 240-3.245 Annual Report Submission Requirements for Gas Utilities

4 CSR 240-3.335 Annual Report Submission Requirements for Sewer Utilities

4 CSR 240-3.435 Annual Report Submission Requirements for Steam Heating Utilities

**4 CSR 240-3.540 Annual Report Submission Requirements for Telecommunications
Companies**

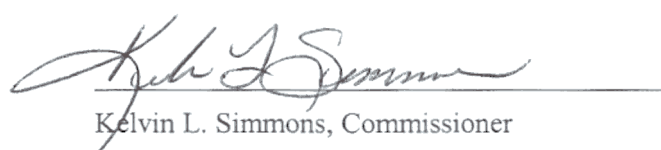
4 CSR 240-3.640 Annual Report Submission Requirements for Water Utilities



Steve Gaw, Chair



Connie Murray, Commissioner



Kelvin L. Simmons, Commissioner



Bryan Forbis, Commissioner



Robert Clayton III, Commissioner



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

KELVIN L. SIMMONS

BRYAN FORBIS

ROBERT M. CLAYTON III

Missouri Public Service Commission

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November 7, 2003

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. PRENGER
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Missouri Small Business Regulatory Fairness Board

c/o Mr. Joseph Driskill, Director
Department of Economic Development
301 West High Street
Jefferson City, MO 65102

Re: Small Business Impact Statement for the following rules:

- 4 CSR 240-3.165, Annual Report Submission Requirements for Electric Utilities
- 4 CSR 240-3.245, Annual Report Submission Requirements for Gas Utilities
- 4 CSR 240-3.335, Annual Report Submission Requirements for Sewer Utilities
- 4 CSR 240-3.435, Annual Report Submission Requirements for Steam Heating Utilities
- 4 CSR 240-3.540, Annual Report Submission Requirements for Telecommunications Companies
- 4 CSR 240-3.640, Annual Report Submission Requirements for Water Utilities

Dear Mr. Driskill:

Executive Order 03-15 requires state agencies to determine whether implementation of a proposed rule making will have direct economic impact on small businesses. A small business is defined in the Executive Order as "a for-profit enterprise consisting of fifty (50) or fewer full or part-time employees." Pursuant to the order, the Commission has completed a "small business analysis" of the above referenced proposed amended rules. The following statement contains the Commission's determinations as required by the Executive Order:

Small utility companies will not be adversely affected by the rule amendments.

2. The rule will apply to all electric, gas, sewer, steam heating and water utilities and telecommunications companies, as defined in Chapter 386 RSMo. (2000), and some of these entities meet the executive order's definition of "small business."
3. The Commission's Staff has determined that the level of costs will not increase as a result of these rule amendments.
4. The Commission expects that neither it nor any other state agency will incur additional costs as a result of the implementation of the proposed rule.

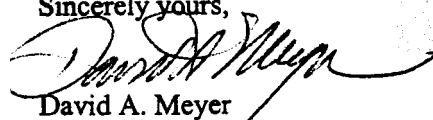
November 7, 2003

Page 2

- 5 Because it has determined that small businesses will not be adversely impacted by the rule the Commission found it unnecessary to make efforts to reduce the impact on small business.
- 6 The Commission invited all utilities to participate in a roundtable discussion hosted in Jefferson City in 2001 to address the topics encompassed by these rule amendments.
- 7 There is no comparable federal rule for the State's annual report submission requirements, but some of the annual report filings do relate to filings at federal regulatory agencies.

Please let me know if you have any questions concerning this proposed rule.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David A. Meyer", written over a horizontal line.

David A. Meyer
Associate General Counsel
Missouri Public Service Commission
(573) 751-8706
(573) 751-9285 (Fax)

COPY

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-3.540
 Diskette File Name Rule 3.540 Word 2000
 Name of Person to call with questions about this rule: David Meyer
 Content David Meyer Phone 573-751-8706 FAX 573-751-9285
 Data Entry Tammy Vieth Phone 573-751-8377 FAX Same as above
 Email Address davidmeyer@psc.state.mo.us
 Interagency Mailing Address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
 Statutory Authority 392.210, 386.250 Current RSMo date 2000
 Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority with history of the rule |
| <input checked="" type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages <u> </u> | <input type="checkbox"/> Private cost |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing and comment period |

C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency Rulemaking, (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST include effective date
- ☒ Proposed Rulemaking (check one) ☐ rule ☒ amendment ☐ rescission
☐ Order of Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST complete page 2 of this transmittal
- ☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency
☐ Rule action notice
☐ In addition
☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number _____

1a. Effective Date for the Order

☐ Statutory 30 days

Specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

☐ YES

☐ NO

1c. If the answer is YES, please complete section F. If the answer is NO, STOP here.

- F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.**

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer text. DO NOT delete the header, however.)

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

information to be kept under seal. Submittals made under this section that do not include both versions will not receive confidential treatment and will be subject to public disclosure. In addition to the foregoing, submittals made under this section must meet the following requirements:

(A) A cover letter stating that the utility is designating some or all of the information in its annual report as confidential information, and including the name, phone number and e-mail address (if available) of the person responsible for addressing questions regarding the confidential portions of the annual report, must be submitted with the reports;

(B) The cover of each version of the report must clearly identify whether it is the public or non-public version;

(C) A detailed affidavit that identifies the specific types of information to be kept under seal, provides a reason why the specific information should be kept under seal and states that none of the information to be kept under seal is available to the public in any format must be prominently attached to both versions of the report; and

(D) Each page of each version of the report that contains non-public information shall be clearly identified as containing such information.

(5) If an entity asserts that any of the information contained in the non-public version of the annual report should be made available to the public, then that entity must file a pleading with the commission requesting an order to make the information available to the public, and shall serve a copy of the pleading on the company affected by the request. The pleading must explain how the public interest is better served by disclosure of the information than the reason provided by the company affected by the request justifying why the information should be kept under seal. The company affected by the request may file a response to a pleading filed under these provisions within ten (10) days after the filing of such a pleading. Within five (5) business days after the due date for the filing of the company's response to a request filed under these provisions, the general counsel by filing of a pleading will make a recommendation to the commission advising whether the request should be granted.

[(4)A utility which] (6) A telecommunications company that is unable to meet the *[filing]* submission date established in section (1) of this rule *[shall make a written request to extend the filing date for its annual report to the secretary of the commission and state the reason for the extension request. The secretary of the commission, through the chief administrative law judge, shall present the report to the commission for approval. The secretary of the commission shall inform the utility in writing within three (3) days of the decision of the commission.]* may obtain an extension of up to thirty (30) days for submitting its annual report by:

(A) Submitting a written request, which states the reason for the extension, to the attention of the secretary of the commission prior to April 15; and

(B) Certifying that a copy of the written request was sent to all parties of record in pending cases before the commission where the utility's activities are the primary focus of the proceedings.

(7) A telecommunications company that is unable to meet the submission date established in section (1) of this rule may request an extension of greater than thirty (30) days for submitting its annual report by:

(A) Filing a pleading, in compliance with the requirements of Chapter 2 of 4 CSR 240, which states the reason for and the length of the extension being requested, with the commission prior to April 15; and

(B) Certifying that a copy of the pleading was sent to all parties of record in pending cases before the commission where the utility's activities are the primary focus of the proceedings.

(8) Responses to deficiency notices under the provisions of section (3) of this rule, requests for confidential treatment under the provisions of section (4) of this rule, pleadings requesting public

disclosure of information contained under seal under the provisions of section (5) of this rule, and requests for extensions of time under the provisions of sections (6) or (7) of this rule may be submitted through the commission's electronic filing and information system (EFIS).

(9) A telecommunications company that does not timely file its annual report, or its response to a notice that its annual report is deficient, is subject to a penalty of one hundred (\$100) dollars for each day that it is late in filing its annual report or its response to a notice of deficiency.

AUTHORITY: sections 386.250 and 392.210, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003.*

**Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 392.210, RSMo 1939, amended 1984, 1987.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices within thirty (30) days of publication in the Missouri Register, and should include a reference to Commission Case No. AX-2004-0160. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. No public hearing is scheduled.